

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

EASTSIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013090024

ORDER DENYING MOTION FOR
STAY PUT

On August 28, 2013, Educational Rights Holder (ERH) on behalf of Student (Student) filed a request for due process hearing (complaint) naming the Eastside Union High School District (District) as respondent. The complaint includes a motion for stay put. No responsive pleading has been received from the District.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

The gist of Student’s complaint is that the District has failed to in its child find obligations to Student and had failed to assess Student for eligibility for special education and related services. Student has failed to demonstrate, or even allege, that there is an

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

Individualized Education Program (IEP) that has been consented to by the ERH and implemented by the District.

As stated above, stay put is the last agreed-upon and implemented IEP. Here, Student fails to demonstrate that he had been found eligible for special education and had an IEP from the District. Thus, Student's motion for stay put is denied without prejudice.

ORDER

Student's motion for stay put is DENIED without prejudice.

Dated: September 13, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings